



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Lida Credit Agency

File: B-239270

Date: August 6, 1990

Sam Zalman Gdanski, Esq., for the protester.
Leigh Ann Holt, Esq., Office of General Counsel, General Services Administration, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that contracting agency acted in bad faith in determining the small business protester nonresponsible is denied where there is no evidence that the agency's actions resulted from bad faith or in the denial of the protester's opportunity to seek a certificate of competency review at the Small Business Administration, the agency which has the statutory authority to conclusively determine an offeror's responsibility.

2. Where the record shows that the Small Business Administration (SBA) considered all information provided to it by the protester during the certificate of competency (COC) proceeding, and the record indicates that the protester is only in disagreement with the result that the SBA reached after considering the evidence, there is no evidence that the SBA acted in bad faith in declining to issue a COC.

DECISION

Lida Credit Agency protests its rejection as nonresponsible under request for proposals (RFP) No. FCGX-S0-890020-N, issued by the Federal Supply Service, General Services Administration (GSA), for the purchase of credit reports. Lida alleges that GSA, in determining it to be nonresponsible, and the Small Business Administration (SBA), which declined to issue Lida a certificate of competency (COC), acted in bad faith.

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We deny the protest.

On September 20, 1989, GSA issued this RFP, which called for multiple awards of firm fixed-priced contracts, to establish arrangements for commercial and/or consumer credit bureaus to furnish factual data credit reports and supplemental reports on individuals, firms, and private non-profit organizations to certain federal agencies, on a requirements basis. The RFP contemplated award to more than one offeror for each line item with awards being made to all responsible offerors whose offers conformed to the RFP and were determined to be the most advantageous to the government.

Lida was recommended for no award on December 13 based upon a financial capability analysis conducted by GSA's Office of Credit and Finance. The financial analysis indicated that Lida's financial statements reflected negative working capital, light net worth compared to the size of the award, and an operating loss in the prior fiscal year. Also, the analysis indicated that Lida had a slow accounts payable record and that four state tax liens and one federal tax lien had been filed against Lida.

In response to the GSA concerns about its financial capability, Lida submitted to GSA, by letter dated February 5, 1990, additional information regarding its finances. Lida advised GSA that slow accounts were not unusual in a labor intense business and that it was in the process of arranging payment plans for its tax liens, a portion of which had already been satisfied. Further, Lida advised that several creditor filings against it had been satisfied, that some losses were due to bookkeeping errors, that it enjoyed a fluid accounts receivable, and that fiscal year 1988-89 was its first loss year.

The Office of Credit and Finance therefore conducted a supplemental preaward survey of Lida's financial capability, which again recommended no award to Lida because the additional information did not reflect an improvement in Lida's financial condition.^{1/} Based upon the finance office's recommendation of no award, the contracting officer determined Lida to be nonresponsible.

^{1/} For example, the finance office determined that the new information did nothing more than confirm that Lida was late in paying accounts and that, while Lida indicated that some of the tax liens had been paid, it did not submit any proof of payment.

Because Lida is a small business concern, this matter was referred to the SBA under the COC program. As part of the COC process, SBA advised Lida that its financial capability was in question and that the burden of demonstrating its financial capability was its responsibility. Further, the COC application, which Lida submitted, requested Lida to provide extensive information, including information on completed contracts and expenses related to the proposed contract. On March 28, the SBA denied Lida a COC because it found its financial capability unsatisfactory. Consequently, the contracting officer rejected Lida's bid on April 3 and Lida protested here on April 12.

Lida alleges that GSA made the nonresponsibility determination in bad faith because GSA did not consider the fact that its financial condition largely can be attributed to the government's late payments under its incumbent contract for these services. Further, Lida argues that it can demonstrate that it is arranging to mortgage property to satisfy the outstanding federal tax lien. Thus, Lida argues that changed circumstances dictate that GSA reconsider its nonresponsibility determination.^{2/} Regarding SBA's denial of the COC, Lida contends that such denial was in bad faith because SBA officials, while conducting the review, allegedly commented that they, the SBA officials, lacked experience with the product and the contract.

With respect to GSA's nonresponsibility determination of Lida, the SBA, and not this Office, has the statutory authority to review a contracting officer's finding of nonresponsibility, and the SBA's determination to issue or to refuse to issue a COC is conclusive with respect to all aspects of a small business concern's responsibility. 15 U.S.C. § 637(b) (1988); F.W. Morse & Co., B-227995, Oct. 26, 1987, 87-2 CPD ¶ 396. Our review is limited to determining whether bad faith or fraudulent actions on the part of government officials resulted in a denial of the protester's opportunity to seek SBA review, or whether the

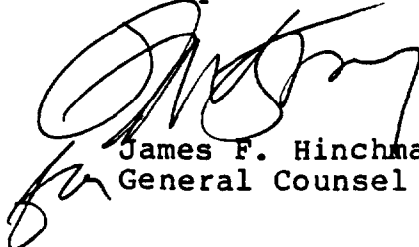
^{2/} Lida also argues that GSA's actions constitute a defacto debarment based upon the court case Leslie and Elliot Co., Inc. v. Garrett, DC DC, No. 89-2865. However, in Leslie the contracting agency's conduct indicated that it no longer intended to do business with the contractor in the future--a fact which Lida has not established in this case. Moreover, we have held that, in the absence of any evidence to the contrary, defacto debarment does not result if a contractor is determined to be nonresponsible in only one procurement, as is the case here. See Frank Cain & Sons, Inc., B-236893, Jan. 11, 1990, 90-1 CPD ¶ 44.

SBA's denial of a COC was made as the result of bad faith or a failure to consider vital information bearing on the firm's responsibility. Fastrax, Inc., B-232251.3, Feb. 9, 1989, 89-1 CPD ¶ 132.

There is no indication in the record of bad faith or fraudulent action on the part of GSA in determining Lida nonresponsible or in referring its nonresponsibility determination to the SBA which resulted in the denial of Lida's opportunity to seek SBA review. To the contrary, we find the record establishes that GSA twice considered Lida's financial capability before determining it to be nonresponsible. While Lida contends that GSA did not consider the fact delinquent payments in prior contracts allegedly may have contributed to its financial condition, it also admits that it did not mention this fact to GSA when its responsibility was under consideration.

Further, we find that Lida has not shown that the SBA officials denied its COC as the result of bad faith or the failure to consider vital information bearing upon its responsibility. Lida's argument of bad faith is premised solely on alleged comments made by SBA officials regarding their lack of knowledge of and experience with the contract. However, the record establishes, and Lida admits, that the SBA considered extensive information submitted by Lida, including alleged government delinquent contract payments, concerning Lida's technical and financial capabilities. It is apparent that what Lida is really objecting to is the fact that the SBA did not view the information it submitted more favorably, not that the SBA officials acted in bad faith. See Action Building Sys., Inc., B-237067, Oct. 4, 1989, 89-2 CPD ¶ 311. Mere disagreement with the SBA decision does not establish that the SBA's action was improperly motivated.

The protest is denied.


James F. Hinchman
General Counsel